

SEVENTH MOTION TO COMPEL - EXHIBIT A

Detective Gilbertson's curriculum vitae. In the State's Rebuttal Expert Witness disclosure the State listed, for the first time, Detective Gilbertson as an expert and promised to provide his CV. The CV has not been disclosed.

Defendant's 22nd Supplemental Request filed 1/28/2025

424. All Othram lab Protocols/Policy and Procedures, and validation studies in place in December 2022 as testified about by Matthew Gamette on 1/23/25.

The State objects to this request as untimely and improper. Matthew Gamette testified about Othram's protocols and procedures in the context of the bidding process. The documents related to the bidding were included in or referenced in the materials provided to the court to review *in camera*. The court required the State to discover only the MOU from the bidding documents. (See Sealed Order for Disclosure of IGG Information and Protective Order, p.5, filed 12/29/2023 ("The State need only discover pages 99-103, the Memorandum of Understanding. The remaining contract documents are not relevant to any issue in the case.")).

The court did not require the State to produce any of the other bidding documentation, including Othram's bid submission that discussed Othram's accreditation status, other customers, past cases, the name and qualifications of the primary genealogist, the name and qualifications of the chief scientist, and the SOPs or analytical methods that were to be used. Though the SOPs were inadvertently excluded from the materials reviewed *in camera*, the bidding document referencing the SOPs were included and the court did not require disclosure of that document or the SOPs.

If the defense thought it should have access to any of the protected materials, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions.

425. All Othram lab materials created, collected or held pursuant to the policy and protocol in place as testified to by Matthew Gamette on 1/23/25. This request includes but is not limited to: all bench notes, original electronic data files (.fastq), photographs, quality records including positive and negative controls and degradation/contamination documents, bioinformatic methods, and documents related to case file #OCN221122-01.

The State objects to this request as both untimely and improper. The State requested from Othram all documents and materials related to the use of IGG in this case and turned those documents over to the court for *in camera* review. The State disclosed to the defense everything ordered to be disclosed by the court after its *in camera* review. (See reference in 424 above to

12/29/23 Order for Disclosure of IGG Information and Protective Order).

If the defense thought it should have access to any of the protected materials, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions

426. All documents and records produced to the FBI, including but not limited to documents and records from Othram, Moscow Police Department, Idaho State Police and Latah County Prosecutor's Office.

The State objects to this request as untimely and improper. The FBI's letter dated November 28, 2023, which the State produced to the defense on 01/29/2024, explains that the FBI provided all the materials in its possession related to the utilization of IGG in this case to the court for *in camera* review. See Bates Page 15306. The State disclosed to the defense everything ordered to be disclosed by the court after its *in camera* review. (See reference in 424 above to 12/29/23 Order for Disclosure of IGG Information and Protective Order).

The requested materials either do not exist or were protected by the court's decision not to require the State to disclose them. If the defense thought it should have access to any of the protected materials, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions.

427. All written notes, records, emails, research or documentation of any kind by Matthew Gamette regarding his efforts to research and obtain voluntary DNA to assist Othram's work to identify the contributor of the DNA on the sheath.

On February 11, 2025, the State received the above requested information from ISP legal counsel. This information will be forthcoming in discovery.

428. All written notes, reports, recordings, or emails related to Vickie Gooch's investigation, interviews, and any efforts made to obtain voluntary DNA to assist Othram's work to identify the contributor of the DNA on the sheath.

The State has inquired of legal counsel for ISP and will supplement the response accordingly.

429. A copy of all records the FBI received from Othram, including but not limited to all records, bioinformatic methods, and documents related to case file #OCN221122- 01.

The State objects to this request as untimely and improper. The FBI's letter dated November 28, 2023, which the State produced to the defense on 01/29/2024, explains that the FBI provided all the materials in its possession related to the utilization of IGG in this case to the court for *in camera* review. See Bates Page 15306. The State disclosed to the defense everything ordered to be disclosed by the court after its *in camera* review. (See reference in 424 above to 12/29/23 Order for Disclosure of IGG Information and Protective Order).

The requested materials either do not exist or were protected by the court's decision not to require the State to disclose them. If the defense thought it should have access to any of the protected materials, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions.

430. All records related to entry in data bases GEDMatch, GEDMatch Pro, FamilyTreeDNA, MyHeritage, and Ancestry.com.

The State objects to this request as both untimely and improper. The defense already tried requesting this same or similar information. The parties litigated the issue, and the court ruled that the State did not have to disclose the information. (See Order on Defendant's 4th and 5th Motions to Compel Discovery, pp.8-12, filed 6/14/2024.)

The defense's attempt to obtain information the court already ruled the State does not have to provide by sending the State a new request is improper. If the defense disagreed with the court's ruling, the proper procedure would have been to move the court to reconsider its decision, and the proper time would have been prior to the defense's deadline for discovery motions.

431. Copy of GED.com file that is part of the Ancestry tree building as testified to by Dr. Leah Larkin on 1/23/25.

The State objects to this request as both untimely and improper. The reference to Dr. Leah Larkin's testimony on 1/23/25 as if that is when the defense first learned of a GED.com file is—at best—misleading. The State sought a protective order for the IGG information in this case. The district court ordered *in camera* review of the IGG information to determine what, if anything, should be disclosed to the defense. The State provided the Court with a letter from the FBI dated November 28, 2023. The letter explained:

A digital version of the family tree exists in the form of a GEDcom file and is available for *in camera* review by the Court upon request. Viewing the digital file requires downloading proprietary software. Examples of websites offering such software include www.ancestry.com, www.genopro.com, and www.familyecho.com. The additional data associated with the individuals as described above are not available via the GEDcom file unless accessed via Ancestry.com.

Bates Pages 15306-07. The court ordered the discovery of certain information reviewed *in camera* but did not request the GEDcom file or order its disclosure. The quoted FBI letter was produced to the defense on 01/29/2024. The defense then waited 12 months after it learned of the GEDcom file and 75 days after its discovery motion deadline to first request the GEDcom file. Additionally, the district court's decision on the State's motion for a protective order meant that the GEDcom file was ordered protected by the court. The defense's attempt to obtain an already-protected file by sending the State a new request is improper. If the defense

thought it should have access to the GEDcom file, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions.

432. Identity of FBI analyst creating the SNP utilized by the FBI in its genetic genealogy investigation.

The State objects to this request as untimely and improper. The request is also factually inaccurate in that no FBI analyst "creat[ing]" a SNP profile in this case. As the State explained to the defense in a letter dated October 11, 2023, when it disclosed the two versions of the SNP profile:

For context, on November 22, 2022, a portion of the DNA extract was personally delivered to Othram Laboratories (a private lab) from ISPFs. Using a portion of the DNA extract, Othram performed a DNA test called Forensic-Grade Genome Sequencing. This created a SNP profile. This SNP profile was uploaded by Othram to begin genealogy research. On December 10, 2022, Othram was instructed to cease all work on the case. Per instructions, Othram transferred all genetic genealogy database credentials to the FBI (emailed log in instructions and password). After this transfer, Othram no longer had access to the genetic genealogy database results. As a result, we are sending you two SNP profiles: (1) the one developed by Othram, and (2) the one from the database transferred to the FBI.

433. Process used by the FBI analyst creating the SNP profile utilized by the FBI in its genetic genealogy investigation including the type of bioinformatic programs used and any and all quality assurance/quality control manuals or protocols as well as validation studies of this method.

See response to Request 432.

434. Identity of FBI IGG/FIGG analyst performing the genetic genealogy investigation.

The State objects to this request as untimely and improper. As the FBI explained to the court in its letter dated November 28, 2023: "personally identifiable information pertaining to the identities of those sending/receiving correspondence have been redacted from any items." Bates Page 15308. The FBI's letter and the email communications with redactions were provided to the defense on 01/29/2024. Nevertheless, the defense waited 12 months after it received this letter and 2.5 months after their deadline for discovery motions passed to request this information.

Additionally, the State again notes that it has complied with the Court's orders as to what information should be disclosed. Defendant's proper recourse would have been to request reconsideration of those orders.

The State will file a motion in limine on the IGG information. Depending on how the court rules, the State may disclose one or more of the IGG analysts as fact witnesses for trial.

435. Results for the IGG/FIGG searches in each of the following databases:

GEDMatch; GEDMatch PRO; FamilyTreeDNA and MyHeritage. This request includes, but is not limited to dates and results of each upload.

The State objects to this request as both untimely and improper. The defense already tried requesting the results from the searches in each database. The parties litigated the issue, and the court ruled that the State did not have to disclose the information. (See Order on Defendant's 4th and 5th Motions to Compel Discovery, pp.8-12, filed 6/14/2024.)

The defense's attempt to obtain information the court already ruled the State does not have to provide by sending the State a new request is improper. If the defense disagreed with the court's ruling, the proper procedure would have been to move the court to reconsider its decision, and the proper time would have been prior to the defense's deadline for discovery motions.

436. All work done by any FBI analyst, investigator, officer, or IGG/FIGG persons working on behalf of the FBI in researching, interviewing and testing any collateral contact for genetic testing.

The State objects to this request as untimely and improper. The FBI's letter dated November 28, 2023, which the State produced to the defense on 01/29/2024, explains that the FBI provided all the materials in its possession related to the utilization of IGG in this case to the court for *in camera* review. See Bates Page 15306. The State disclosed to the defense everything ordered to be disclosed by the court after its *in camera* review.

The requested materials either do not exist or were protected by the court's decision not to require the State to disclose them. If the defense thought it should have access to any of the protected materials, the proper procedure would have been to move the court to reconsider its decision on the protective order and the proper time would have been prior to the defense's deadline for discovery motions.

437. Any and all communications between Moscow PD, Latah County prosecutors, Idaho state Attorney General or FBI with Othram labs regarding the SNP testing and genetic genealogy research conducted by Othram after 12/10/22

All non-attorney work product emails regarding IGG, SNP or Othram genetic genealogy which were ordered to be disclosed after the Courts *in camera* review have been previously provided to the Defendant.